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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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UNITED STATES OF AMERICA

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*versus*

CASE NO. 4:17-CR-118(1)

HOWARD GREGG DIAMOND

**MEMORANDUM AND ORDER**

Pending before the court is Defendant Howard Gregg Diamond’s (“Appellant”) *pro se* letter request to appeal *in forma pauperis* (“IFP”) (#111). Having considered the motion, the record, and the applicable law, the court is of the opinion that the motion should be denied.

Under certain circumstances, the court may grant a party leave to proceed on appeal without prepaying or giving security for fees and costs. *See* 28 U.S.C. § 1915(a); FED. R. APP. P. 24(a). To proceed IFP, a party must submit an affidavit that includes a statement of all assets he possesses demonstrating his inability to prepay or give security for fees and that states the nature of the appeal and the affiant’s belief that he is entitled to redress. 28 U.S.C. § 1915(a)(1). A prisoner who seeks to proceed IFP must also submit a certified copy of his trust fund account statement or institutional equivalent for the 6-month period immediately preceding the filing of the notice of appeal. *Id.* § 1915(a)(2). If granted leave to proceed IFP, a prisoner is still obligated to pay the full amount of the filing fee over time, when funds exist, through an initial partial filing fee and monthly installments withdrawn from the prisoner’s account. *Id.* § 1915(b)(1), (2); *Hawes v. Stephens*, 964 F.3d 412, 417 (5th Cir. 2020). A prisoner may proceed IFP on appeal only if he is economically eligible and presents a nonfrivolous issue. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). An issue is not frivolous if it involves “legal points arguable on their

merits.” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); *accord United States v. Castillo-Chavez*, 828 F. App’x 207, 207 (5th Cir. 2020).

In this case, on June 15, 2020, the court entered an order (#107) denying Appellant’s motion for compassionate release. On June 29, 2020, Appellant filed a notice of appeal, seeking to appeal the court’s order dated June 15, 2020. On July 23, 2020, Appellant filed the instant motion, seeking leave to proceed IFP, and attached a financial affidavit, which states that he has no income or assets. Appellant, however, did not include a certified copy of his trust fund account statement, nor did he state the nature of or specify any basis for his appeal of the court’s denial of compassionate release.

Consequently, his *pro se* letter request to appeal IFP (#111) is DENIED.

SIGNED at Beaumont, Texas, this 4th day of January, 2021.



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MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE